

SERVED: December 8, 1994

NTSB Order No. EA-4284

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 10th day of November, 1994

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DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-13364
v.	)	
	)	
HOMAYOON S. NOROOZI,	)	
	)	
Respondent.	)	
	)	

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**OPINION AND ORDER**

Respondent has appealed from an order issued by Administrative Law Judge William E. Fowler, Jr.,<sup>1</sup> granting the Administrator's motion to dismiss, as untimely, respondent's appeal from an order of the Administrator suspending his private pilot certificate for 30 days.<sup>2</sup> For the reasons discussed below,

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<sup>1</sup> A copy of the law judge's order is attached.

<sup>2</sup> The order of suspension was based on respondent's alleged failure to timely report to the FAA Security Division an alcohol-

respondent's appeal is denied and the law judge's order of dismissal is affirmed.<sup>3</sup>

On September 15, 1993 (following issuance of a notice of proposed suspension, dated April 16, 1993, and an informal conference attended by respondent on August 25), the Administrator sent an order of suspension to respondent's home address by certified mail, return-receipt requested. The order was ultimately returned to the FAA as "unclaimed" on October 12.

Respondent admits that he received delivery notices from the post office dated September 21 (showing that the mail had been sent from the FAA's zip code), and September 27 (showing the sender as "Fed Aviation"), and that the September 27 notice indicated that unless it was picked up, the mail would be returned to sender on October 6. Both notices indicated that respondent could obtain the mail by authorizing redelivery (to his home or elsewhere) in his absence, or by picking up the letter at the post office. Respondent also acknowledges that on  
(..continued)  
related motor vehicle action, as required by 14 C.F.R. § 61.15(e) and (f).

<sup>3</sup> Respondent has filed a letter asking that the Administrator's reply brief and the complaint be dismissed because, according to respondent, the Administrator failed to serve him with notice of a change in counsel, as required by 49 C.F.R. 821.6(d) and 821.8(b). However, the record indicates that the Administrator did indeed serve respondent, by certified mail to his address of record, with a copy of a letter entering the appearance of appellate counsel in this case. The Administrator states, in his response to respondent's letter, that no return-receipt was received and that the letter was not returned as "unclaimed" or "undeliverable." No more was required of the Administrator to fulfill his duty to notify respondent of the change in counsel. Moreover, even if there had been a lapse in that duty, dismissal of the case would be an inappropriate and unwarranted remedy.

August 26, 1993 (the day after the informal conference), counsel for the Administrator had informed him by telephone that an order of suspension would soon be issued. Respondent concedes in his appeal brief that he "should have known that the document for which [he] received postal notices was [one] affecting [his] airman certificate."

Although respondent claims that he was unable to pick up the certified mail because he was out of town for much of the time at issue, he also states that he telephoned the post office on September 29 to arrange to pick up the mail later that day, but that the postal clerk was unable to locate the mail at that time.

He further claims that he left his phone number with the clerk and asked for redelivery on October 2, 1993. Even though the letter was not delivered to respondent on October 2 as he requested, he waited until October 6 before again calling the post office and requesting that the letter be held until October 8, when he intended to pick it up. On October 8, he discovered that, despite his request, the mail had been returned to its sender the day before. Finally, on October 15, respondent contacted the FAA and requested that the order be remailed. At that time he was informed that his time for appealing had lapsed.

Nonetheless, after he was sent a copy of the order of suspension, respondent filed a notice of appeal dated October 21, postmarked October 22.

Section 821.30(a) of our Rules of Practice (49 C.F.R. 821.30(a)) requires an appeal from an order of the Administrator

to be filed "within 20 days from the time of service of the order." Because, as the law judge noted, the Board's rules regarding service do not apply until after there has been an appeal to the Board, the adequacy of service in this case must be evaluated under principles of general law.<sup>4</sup> Applying those principles, we have held in similar cases that when an order sent by certified mail is returned to the FAA as "unclaimed" after the respondent has received notices from the postal service, but has failed to respond with due diligence, the respondent has been constructively served as of the date of mailing.<sup>5</sup> All of those elements are met in this case. Thus, service of the order in this case occurred on September 15, 1993, and respondent's notice of appeal was due by October 5, 1993. The law judge was therefore justified in granting the Administrator's motion to dismiss respondent's appeal (dated October 21 and postmarked October 22) as untimely.

In his appeal from the law judge's order, respondent seems

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<sup>4</sup> Administrator v. Heinberg, 5 NTSB 917, 918 (1986).

<sup>5</sup> Administrator v. Coombs, NTSB Order No. EA-3609 (1992); Administrator v. Bakker, NTSB Order No. EA-3681 (1992). In Coombs, at 4, we stated that "the dispositive question . . . as to the adequacy of the service . . . [is] whether the respondent successfully demonstrated that he had not received any notices concerning the certified mail he did not claim."

This case differs from Administrator v. Heinberg, 5 NTSB 917 (1986), where we found constructive service of the Administrator's order of revocation had not been achieved. In that case, unlike here, there was no evidence that the respondent had received the delivery notices from the postal service, and no reason for the respondent to know that the Administrator had issued an order affecting his certificate.

to argue that, because he was not specifically informed of the 20-day appeal requirement prior to its expiration, he should not be penalized for failing to meet it. He claims that if the Administrator's counsel had advised him of that requirement prior to issuance of the order, he "would have taken extraordinary measures to locate and claim the certified mail." As the Administrator notes, respondent is essentially admitting that he was not as diligent as he could have been in attempting to procure the order in this case. But more importantly, respondent's position that his ignorance of the requirement should excuse his non-compliance is legally unsound. Duly promulgated regulations provide constructive notice of their requirements, and are legally binding regardless of actual knowledge.<sup>6</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The law judge's order dismissing respondent's appeal from the order of suspension is affirmed.

HALL, Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

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<sup>6</sup> See Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384-85; 68 S.Ct. 1, 3 (1947); Wolfson v. United States, 492 F.2d 1386, 1392 (Ct. Cl. 1974).